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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 IVAN DOMINGUEZ,

10 Petitioner,

11 vs.

12 BRIAN E. WILLIAMS, et al.,

13 Respondents.

Case No. 2:12-cv-01609-APG-NJK

ORDER

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15 Before the court are petitioner's motion for an order staying and holding these proceedings
16 in abeyance (#45), respondents' opposition (#55), and petitioner's reply (#60). The court denies the
17 motion.

18 The court had granted in part respondents' motion to dismiss, ruling that grounds 11, 12, 13,
19 15, and 16 of the first amended petition (#31) were unexhausted.¹ Order (#48). To obtain a stay of
20 this action, petitioner must show that he has "good cause for his failure to exhaust, his unexhausted
21 claims are potentially meritorious, and there is no indication that the petitioner engaged in
22 intentionally dilatory litigation tactics." Rhines v. Weber, 544 U.S. 269, 278 (2005). Good cause is
23 the issue; respondents do not dispute that the unexhausted grounds have potential merit, nor do they
24 dispute that petitioner has not been dilatory.

25 Rhines did not define "good cause." Later, the Supreme Court held, in the context of
26 procedural default:

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28 ¹The court also ruled that grounds 5 through 10 were unexhausted in part, due to
incorporation of facts from the fully unexhausted grounds.

1 [W]hen a State requires a prisoner to raise an ineffective-assistance-of-trial-counsel claim in
 2 a collateral proceeding, a prisoner may establish cause for a default of an
 3 ineffective-assistance claim in two circumstances. The first is where the state courts did not
appoint counsel in the initial-review collateral proceeding for a claim of ineffective
assistance at trial. The second is where appointed counsel in the initial-review collateral
 4 proceeding, where the claim should have been raised, was ineffective under the standards of
Strickland v. Washington, 466 U.S. 668 (1984).

5 Martinez v. Ryan, 132 S. Ct. 1309, 1318 (2012) (emphasis added).² Then, the court of appeals
 6 expanded Martinez to requests for stays under Rhines. “[W]e hold that the Rhines standard for
 7 [ineffective-assistance-of-counsel]-based cause is not any more demanding than the cause standard
 8 articulated in Martinez. Blake v. Baker, 745 F.3d 977, 984 (9th Cir. 2014).

9 The court is not persuaded that Blake is inapplicable in this case. Blake was represented by
 10 counsel in his initial state post-conviction habeas corpus petition, and, to the extent that it makes a
 11 difference, his sentence was death. Id. at 979. Petitioner was not sentenced to death, and, more
 12 importantly for this analysis, he proceeded pro se in his state post-conviction proceedings.
 13 However, these distinctions do not make a difference because of the principle behind Blake. The
 14 court of appeals noted:

15 Unlike a successful showing of cause under Coleman[v. Thompson, 501 U.S. 722 (1991)]
 16 and Martinez, an IAC-based showing of good cause under Rhines only permits a petitioner
 17 to return to state court—not bypass the state court as would be the case under Coleman—to
 18 exhaust his unexhausted claims. Because a Rhines stay and abeyance does not undercut the
 interests of comity and federalism embedded in our habeas jurisprudence, a Rhines
 petitioner arguing IAC-based good cause is not required to make any stronger a showing of
 cause than a Coleman/Martinez petitioner.

19 Blake, 745 F.3d at 983-84. That principle applies with equal force to a person who was not
 20 represented in his state post-conviction habeas corpus petition as to a person who was so
 21 represented.

22 The court also is not persuaded by respondents’ argument that this application of Blake
 23 would undermine the statement in Rhines that stays should be granted only in “limited
 24 circumstances.” The court of appeals addressed that argument in Blake and noted that a petitioner

26 ²Martinez has been expanded to claims of ineffective assistance of appellate counsel and
 27 when, in the absence of a requirement that a claim of ineffective assistance counsel be raised in a
 28 post-conviction habeas corpus petition, the state provides no meaningful opportunity to raise a
 claim of ineffective assistance of counsel on direct appeal. These expansions are not relevant to this
 case.

1 seeking a stay must still also show that the unexhausted claims have potential merit and that the
2 petitioner has not been intentionally dilatory. Those two factors are not at issue right now.

3 IT IS THEREFORE ORDERED that petitioner's motion for an order staying and holding
4 these proceedings in abeyance (#45) is **GRANTED**.

5 IT IS FURTHER ORDERED that this action is **STAYED** pending exhaustion of the
6 unexhausted claims. Petitioner shall return to this court with a motion to reopen within forty-five
7 (45) days of issuance of the remittitur by the Nevada Supreme Court at the conclusion of the state
8 court proceedings. Further, petitioner or respondents otherwise may move to reopen the action and
9 seek any relief appropriate under the circumstances.

10 IT FURTHER IS ORDERED that the clerk of court shall administratively close this action
11 until such time as the court grants a motion to reopen the action.

12 Dated: April 13, 2105.

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ANDREW P. GORDON
United States District Judge